

Plaintiffs' Exhibit 87

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

UNITED STATES OF AMERICA, :
et al., :
Plaintiffs :
v. : No. 1:23-cv-00108
GOOGLE, LLC, :
Defendants. :

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Monday, August 21, 2023

Video Deposition of CHRISTOPHER KOEPKE,
taken at the Law Offices of Paul, Weiss,
Rifkind, Wharton & Garrison LLP, 2001 K St NW,
Washington, DC, beginning at 9:35 a.m. Eastern
Standard Time, before Ryan K. Black, Registered
Professional Reporter, Certified Livenote
Reporter and Notary Public in and for the
District of Columbia

Job No. CS6043164

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<p style="text-align: right;">Page 6</p> <p>1 follows:</p> <p>2 * * *</p> <p>3 EXAMINATION</p> <p>4 BY MS. GOODMAN:</p> <p>5 Q. Good morning, Mr. Koepke.</p> <p>6 A. Good morning.</p> <p>7 Q. Have you been deposed before?</p> <p>8 A. I think once. I'm not exactly sure it</p> <p>9 was a formal deposition, --</p> <p>10 Q. Okay.</p> <p>11 A. -- but yes.</p> <p>12 Q. Was there a court reporter taking down</p> <p>13 everything you were saying?</p> <p>14 A. No, there was not.</p> <p>15 Q. Okay. So in this deposition,</p> <p>16 it's important that you allow me to finish my</p> <p>17 question before you answer, because our court</p> <p>18 reporter, Mr. Black, is taking down everything</p> <p>19 we're saying --</p> <p>20 A. All right.</p> <p>21 Q. -- and he can't take two people talking</p> <p>22 at the same time. Okay?</p> <p>23 A. All right.</p> <p>24 Q. So please let me finish my question</p> <p>25 before you begin your answer. Okay?</p>	<p style="text-align: right;">Page 8</p> <p>1 healthcare programs. When we need people,</p> <p>2 citizens of America to take an action, it is my</p> <p>3 job to do outreach to help them know what actions</p> <p>4 they need to take. I could probably go on for</p> <p>5 the rest of the day with details on that.</p> <p>6 Q. I'm sure we'll get to it. How long have</p> <p>7 you been the director -- is the strategic</p> <p>8 marketing -- strike that.</p> <p>9 Is the Strategic Marketing Group</p> <p>10 abbreviated SMG?</p> <p>11 A. Yes, it is.</p> <p>12 Q. Okay. How long have you been director</p> <p>13 of SMG?</p> <p>14 A. Approximately nine to ten years.</p> <p>15 Q. And prior to serving as director of SMG,</p> <p>16 what -- what job did you have, if any?</p> <p>17 A. I was the deputy director of the</p> <p>18 Creative Services Group in the Office of</p> <p>19 Communications at the Centers for Medicare and</p> <p>20 Medicaid Services.</p> <p>21 Q. And how long were you the deputy</p> <p>22 director of the Creative Services Group?</p> <p>23 A. I would say three to four years.</p> <p>24 Q. In your role as director of SMG, who do</p> <p>25 you report to?</p>
<p style="text-align: right;">Page 7</p> <p>1 A. Okay.</p> <p>2 Q. Okay. And the court reporter also</p> <p>3 cannot record nonverbal answers or half verbal</p> <p>4 answers, like uh-huh or huh-uh, so please make</p> <p>5 sure to speak in a -- answer the questions</p> <p>6 verbally. Okay?</p> <p>7 A. Okay.</p> <p>8 Q. Okay. And I will assume that you</p> <p>9 understand my questions unless you ask me for a</p> <p>10 clarification. Okay?</p> <p>11 A. Okay.</p> <p>12 Q. And is there any reason you're unable to</p> <p>13 provide your truthful and accurate testimony here</p> <p>14 today?</p> <p>15 A. No.</p> <p>16 Q. Okay. What is your current title?</p> <p>17 A. Director of the Strategic Marketing</p> <p>18 Group in the Office of Communications at the</p> <p>19 Centers for Medicare and Medicaid Services.</p> <p>20 Q. And what are your responsibilities as</p> <p>21 the director of the Strategic Marketing Group at</p> <p>22 the Office of Communications at the Centers for</p> <p>23 Medicare and Medicaid Services?</p> <p>24 A. When -- this federal agency is</p> <p>25 responsible for Medicare, Medicaid and other</p>	<p style="text-align: right;">Page 9</p> <p>1 A. I report to the deputy director of the</p> <p>2 Office of Communications.</p> <p>3 Q. And what is that individual's name?</p> <p>4 A. Mary Wallace.</p> <p>5 Q. How long has Mary Wallace been the</p> <p>6 person to whom you've -- who you report?</p> <p>7 A. Nine to ten years.</p> <p>8 Q. And to whom does Ms. Wallace report?</p> <p>9 MS. CLEMONS: Objection; foundation.</p> <p>10 THE WITNESS: Many people, but the</p> <p>11 administrator of CMS.</p> <p>12 BY MS. GOODMAN:</p> <p>13 Q. And who is the current administrator of</p> <p>14 CMS?</p> <p>15 A. Chiquita Brooks-LaSure.</p> <p>16 Q. And how long has Ms. LaSure been the</p> <p>17 administrator at CMS?</p> <p>18 MS. CLEMONS: Objection; foundation.</p> <p>19 THE WITNESS: I don't know when she was</p> <p>20 confirmed.</p> <p>21 BY MS. GOODMAN:</p> <p>22 Q. Okay. How many administrators of CMS</p> <p>23 have you worked under over the course of your</p> <p>24 time as director of SMG?</p> <p>25 A. I could give you an approximate number.</p>

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<p>1 keep going.</p> <p>2 MS. CLEMONS: Okay.</p> <p>3 BY MS. GOODMAN:</p> <p>4 Q. Thank you. I appreciate it. And then</p> <p>5 we can take a break.</p> <p>6 GumGum. Have you heard of GumGum?</p> <p>7 A. Yes.</p> <p>8 Q. Is that a programmatic provider CMS has</p> <p>9 used.</p> <p>10 MS. CLEMONS: Objection to form.</p> <p>11 THE WITNESS: We usually use GumGum,</p> <p>12 yes.</p> <p>13 BY MS. GOODMAN:</p> <p>14 Q. And how do you -- why does CMS use</p> <p>15 GumGum relative to any other programmatic</p> <p>16 provider?</p> <p>17 MS. CLEMONS: Objection; form.</p> <p>18 THE WITNESS: We invest in multiple</p> <p>19 programmatic providers so we can track their ROI,</p> <p>20 their return on investment, to be as efficient as</p> <p>21 possible.</p> <p>22 BY MS. GOODMAN:</p> <p>23 Q. And what about Adsmovil? Have you heard</p> <p>24 of Adsmovil?</p> <p>25 A. Yes.</p>	<p>1 used?</p> <p>2 MS. CLEMONS: Objection to form.</p> <p>3 THE WITNESS: Yes.</p> <p>4 BY MS. GOODMAN:</p> <p>5 Q. And why has CMS used MNI relative to any</p> <p>6 other programmatic provider?</p> <p>7 MS. CLEMONS: Objection; form.</p> <p>8 THE WITNESS: We invest in multiple</p> <p>9 programmatic providers so we can track their</p> <p>10 return on investment so we can see what is most</p> <p>11 efficient at achieving our goals.</p> <p>12 BY MS. GOODMAN:</p> <p>13 Q. Okay. And then can you think of any</p> <p>14 Google programmatic services that CMS has used?</p> <p>15 MS. CLEMONS: Objection; form.</p> <p>16 THE WITNESS: Yes.</p> <p>17 BY MS. GOODMAN:</p> <p>18 Q. Which ones?</p> <p>19 A. Google Display Network and DV360.</p> <p>20 Q. And relative to any other programmatic</p> <p>21 provider, why does CMS use Google Display Network</p> <p>22 or DV360?</p> <p>23 MS. CLEMONS: Objection; form.</p> <p>24 THE WITNESS: We use them to compare to</p> <p>25 the other programmatic providers, to track their</p>
Page 71	Page 73
<p>1 Q. Is that a programmatic provider that CMS</p> <p>2 has used.</p> <p>3 MS. CLEMONS: Objection; form.</p> <p>4 THE WITNESS: Yes.</p> <p>5 BY MS. GOODMAN:</p> <p>6 Q. Why do you use Adsmovil relative to any</p> <p>7 other programmatic provider?</p> <p>8 MS. CLEMONS: Objection; form.</p> <p>9 THE WITNESS: We use multiple</p> <p>10 programmatic providers to track the return on</p> <p>11 investment on a particular campaign to be most</p> <p>12 efficient to achieve our goals for the American</p> <p>13 taxpayer.</p> <p>14 BY MS. GOODMAN:</p> <p>15 Q. And last one. Have you heard of</p> <p>16 QuantiCast?</p> <p>17 A. Yes.</p> <p>18 Q. Is that a programmatic provider that CMS</p> <p>19 has used?</p> <p>20 MS. CLEMONS: Objection; form.</p> <p>21 THE WITNESS: I am not sure.</p> <p>22 BY MS. GOODMAN:</p> <p>23 Q. Okay. Have you heard of MNI?</p> <p>24 A. Yes.</p> <p>25 Q. Is that a programmatic provider CMS has</p>	<p>1 return on investment, to be as efficient with the</p> <p>2 taxpayer dollars as we can.</p> <p>3 BY MS. GOODMAN:</p> <p>4 Q. Okay.</p> <p>5 A. Generally, they have the best reach.</p> <p>6 MS. GOODMAN: Okay. We can take a</p> <p>7 break.</p> <p>8 THE VIDEOGRAPHER: The time is 11:03</p> <p>9 a.m. This ends unit 1. We're off the record.</p> <p>10 (Recess taken.)</p> <p>11 THE VIDEOGRAPHER: The time is 11:20</p> <p>12 a.m. This begins Unit Number 2. We're on the</p> <p>13 record.</p> <p>14 BY MS. GOODMAN:</p> <p>15 Q. Mr. Koepke, have you -- can you think of</p> <p>16 any other places CMS has placed ads that would be</p> <p>17 in the bucket of ads within a logged-in</p> <p>18 experience?</p> <p>19 MS. CLEMONS: Objection to form.</p> <p>20 THE WITNESS: Not off the top of my</p> <p>21 head.</p> <p>22 BY MS. GOODMAN:</p> <p>23 Q. And another kind of digital ad we've</p> <p>24 discussed was OTT ads. Do you recall that?</p> <p>25 A. Yes.</p>

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<p style="text-align: right;">Page 74</p> <p>1 Q. What -- what places has CMS placed OTT</p> <p>2 ads?</p> <p>3 MS. CLEMONS: Objection to form.</p> <p>4 THE WITNESS: Hulu. I'm pulling a blank</p> <p>5 on a couple of the others. Competitors to Hulu.</p> <p>6 BY MS. GOODMAN:</p> <p>7 Q. And do you know what mechanism CMS uses</p> <p>8 to place ads on Hulu or other competitors to</p> <p>9 Hulu?</p> <p>10 MS. CLEMONS: Objection to form.</p> <p>11 THE WITNESS: We provide direction to</p> <p>12 our contractors to place ads on OTT to reach</p> <p>13 audiences of interest for our programs.</p> <p>14 BY MS. GOODMAN:</p> <p>15 Q. And do you provide any direction in what</p> <p>16 particular way to place OTT ads in order to reach</p> <p>17 audiences of interest?</p> <p>18 MS. CLEMONS: Objection to form.</p> <p>19 THE WITNESS: We provide direction as to</p> <p>20 the tactics and the channels that will reach the</p> <p>21 audiences of our interest.</p> <p>22 BY MS. GOODMAN:</p> <p>23 Q. Do you -- do you direct them to use any</p> <p>24 particular ad-buying tool in order to place ads</p> <p>25 on OTT?</p>	<p style="text-align: right;">Page 76</p> <p>1 who did not make it through the privacy analysis</p> <p>2 and was not approved for use?</p> <p>3 MS. CLEMONS: Objection; form.</p> <p>4 Foundation.</p> <p>5 THE WITNESS: I am not.</p> <p>6 BY MS. GOODMAN:</p> <p>7 Q. So we've talked about a variety of types</p> <p>8 of digital ads, YouTube, programmatic mobile,</p> <p>9 programmatic video, programmatic display, ads</p> <p>10 with publishers, website takeovers, ads within a</p> <p>11 logged-in experience, including Google Discovery,</p> <p>12 Facebook, Instagram, Twitter and LinkedIn,</p> <p>13 Search, including Google and Bing and</p> <p>14 over-the-top ads, including Hulu and competitors</p> <p>15 of Hulu. How does CMS decide which of those</p> <p>16 digital categories to use when making decisions</p> <p>17 about advertising?</p> <p>18 MS. CLEMONS: Objection; form.</p> <p>19 Foundation.</p> <p>20 THE WITNESS: We consider the audience</p> <p>21 that we try to reach, the behavior we want them</p> <p>22 to do, and the size of the budget that we have at</p> <p>23 our disposal.</p> <p>24 BY MS. GOODMAN:</p> <p>25 Q. Anything else that you consider in</p>
<p style="text-align: right;">Page 75</p> <p>1 MS. CLEMONS: Objection to form.</p> <p>2 Foundation.</p> <p>3 THE WITNESS: We do.</p> <p>4 BY MS. GOODMAN:</p> <p>5 Q. And what ad-buying tools do you direct</p> <p>6 the ad agencies to use in order to place ads on</p> <p>7 OTT?</p> <p>8 MS. CLEMONS: Objection; form.</p> <p>9 THE WITNESS: I'm not sure.</p> <p>10 BY MS. GOODMAN:</p> <p>11 Q. Okay. So how do you know that you</p> <p>12 direct them to use particular ad-buying tools?</p> <p>13 A. In our media plans, we approve the</p> <p>14 entire media plan, which included ad-buying</p> <p>15 tools.</p> <p>16 Q. And do all of the ad-buying tools used</p> <p>17 by ad agencies for CMS need to go through the</p> <p>18 privacy analysis that we talked about earlier?</p> <p>19 MS. CLEMONS: Objection; form.</p> <p>20 Foundation.</p> <p>21 THE WITNESS: To the degree that there</p> <p>22 is a data exchange with our website. That's the</p> <p>23 key.</p> <p>24 BY MS. GOODMAN:</p> <p>25 Q. Are you aware of any digital ad provider</p>	<p style="text-align: right;">Page 77</p> <p>1 making a decision on which advertising -- digital</p> <p>2 advertising category to use?</p> <p>3 MS. CLEMONS: Objection; form.</p> <p>4 THE WITNESS: That might vary by</p> <p>5 campaign, but off the top of my head I can't say.</p> <p>6 What I said was the most important.</p> <p>7 BY MS. GOODMAN:</p> <p>8 Q. Does CMS try to create an appropriate</p> <p>9 mix of advertising across all of the categories</p> <p>10 that we've discussed?</p> <p>11 MS. CLEMONS: Objection; form.</p> <p>12 THE WITNESS: What would be your</p> <p>13 definition of appropriate mix?</p> <p>14 BY MS. GOODMAN:</p> <p>15 Q. For whatever is -- CMS deems to be</p> <p>16 appropriate for a given campaign. So do you</p> <p>17 decide to use multiple different channels, and,</p> <p>18 if so, how do you make those decisions?</p> <p>19 MS. CLEMONS: Objection; form.</p> <p>20 THE WITNESS: We assess the goal of</p> <p>21 the campaign, the audience that we're trying to</p> <p>22 reach, how we can best reach them, and the amount</p> <p>23 of resources we have.</p> <p>24 BY MS. GOODMAN:</p> <p>25 Q. And in the course of those</p>

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<p>1 Q. Okay. How about the -- have you 2 observed any changes in the availability of 3 advertising providers that you could use to reach 4 your audience over the 2019 to 2023 time period? 5 MS. CLEMONS: Objection to form. 6 THE WITNESS: I don't recall. 7 BY MS. GOODMAN: 8 Q. So earlier we talked about a lot of the 9 different programmatic providers that CMS has 10 used. 11 A. Mm-hmm. 12 Q. Do you recall that testimony? 13 A. Yes, I do. 14 Q. Okay. With respect to those providers, 15 were they all available to CMS in the 2019 year 16 as compared to the 2023 year? 17 MS. CLEMONS: Objection; form. 18 THE WITNESS: I don't recall. 19 BY MS. GOODMAN: 20 Q. Are you aware of any advertising 21 providers who were not available to CMS in 22 2019 but who are available to CMS in 2023? 23 MS. CLEMONS: Objection to form. 24 THE WITNESS: I am not. 25 BY MS. GOODMAN:</p>	<p>1 best of my recollection, that type of display 2 ad has increased in its value to us. 3 BY MS. GOODMAN: 4 Q. And how does CMS go about -- what 5 methods does CMS use to place these kinds of 6 prospecting display ads? 7 MS. CLEMONS: Objection to form. 8 THE WITNESS: We direct our contractors 9 to do it on our behalf. 10 BY MS. GOODMAN: 11 Q. And do you direct them to use any 12 particular provider? 13 MS. CLEMONS: Objection to form. 14 Foundation. 15 THE WITNESS: We will direct them to use 16 particular providers. 17 BY MS. GOODMAN: 18 Q. Okay. So with respect to the increasing 19 effectiveness of prospecting display ads, what 20 providers have you used? 21 MS. CLEMONS: Objection to form. 22 THE WITNESS: Off the top of my mind, I 23 can think of two -- 24 BY MS. GOODMAN: 25 Q. Which are those?</p>
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<p>1 Q. Okay. So one of the subtle changes 2 that you said you observed was that display has 3 become more impactful, correct? And when you say 4 "display," can you be more detailed about what 5 kind of display advertising you mean that has 6 become more impactful as in having a higher 7 return on investment? 8 MS. CLEMONS: Objection to form. 9 THE WITNESS: So kind of display really 10 covers a lot of categories, because there's 11 creative, there's delivery systems, there's 12 targeted. Do you have anything particularly in 13 mind? 14 BY MS. GOODMAN: 15 Q. No. I want to understand what you mean 16 by "display being more impactful." 17 A. All right. 18 MS. CLEMONS: Objection to form. 19 THE WITNESS: So to the best of my 20 recollection, display ads that -- what we would 21 call -- I don't know. Let me see. I've gotta 22 think of the term here -- prospecting. So those 23 are the ads that go out and find people who could 24 benefit from the program, who may or may not have 25 ever interacted with the program before. To the</p>	<p>1 A. Which does not mean that there aren't 2 others. 3 Q. Sure. 4 A. So Google and MIQ. 5 MS. GOODMAN: Shall we take a break for 6 lunch? 7 MS. CLEMONS: Yeah. 8 THE WITNESS: I'm good with whatever. 9 THE VIDEOGRAPHER: The time is 12:22 10 p.m. This ends Unit 2. We're off the record. 11 (Lunch recess taken.) 12 (Exhibit No. 65, a document Bates 13 Numbered CMS-ADS-11906 through 11974, was 14 introduced.) 15 THE VIDEOGRAPHER: The time is 1:14 p.m. 16 This begins Unit Number 3. We're on the record. 17 BY MS. GOODMAN: 18 Q. Mr. Koepke, I'm going to hand you a 19 document marked Exhibit 65, CMS-ADS-11906 through 20 11974. 21 And this is a technical proposal from 22 Weber Shandwick for Healthcare.gov 2010 Open 23 Enrollment campaign, correct? 24 A. I'm not sure. It's going to take me a 25 minute to look at it.</p>

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<p style="text-align: right;">Page 118</p> <p>1 Q. Sure.</p> <p>2 A. It appears as such.</p> <p>3 Q. Okay. And what is the purpose of a</p> <p>4 technical proposal, to your knowledge?</p> <p>5 MS. CLEMONS: Objection; form.</p> <p>6 THE WITNESS: A technical proposal is</p> <p>7 part of a contracting process. So the offerers,</p> <p>8 which are the different ad agencies who might be</p> <p>9 interested in contracting with the federal</p> <p>10 government, would write a technical proposal to</p> <p>11 show their abilities to meet the standards that</p> <p>12 the federal government has set forward.</p> <p>13 BY MS. GOODMAN:</p> <p>14 Q. And did multiple different contractors</p> <p>15 compete each year for the Open Enrollment</p> <p>16 campaign, or was it only Webber Shandwick?</p> <p>17 MS. CLEMONS: Objection to form.</p> <p>18 THE WITNESS: Each year?</p> <p>19 BY MS. GOODMAN:</p> <p>20 Q. Each year.</p> <p>21 A. Okay. It was not always only Weber</p> <p>22 Shandwick, to the best of my knowledge. I'm</p> <p>23 actually not a hundred percent sure, but -- so I</p> <p>24 don't know.</p> <p>25 Q. Okay. As the director of the Strategic</p>	<p style="text-align: right;">Page 120</p> <p>1 Marketing Group" incorrectly. It sounded correct</p> <p>2 to me.</p> <p>3 BY MS. GOODMAN:</p> <p>4 Q. Okay. I don't understand what the</p> <p>5 detail with respect to the Strategic Marketing</p> <p>6 Group led you to say no to my question.</p> <p>7 MS. CLEMONS: Objection to form.</p> <p>8 BY MS. GOODMAN:</p> <p>9 Q. Can you explain that to me?</p> <p>10 A. Your question had three parts: Have I</p> <p>11 ever read a technical proposal. Is it about</p> <p>12 advertising. And is it for the Strategic</p> <p>13 Marketing Group at CMS. I guess that's four</p> <p>14 parts.</p> <p>15 The Strategic Marketing Group did not</p> <p>16 exist when I read the technical proposals.</p> <p>17 Q. When did you read the technical</p> <p>18 proposals?</p> <p>19 MS. CLEMONS: Objection to form.</p> <p>20 THE WITNESS: The early 2000s.</p> <p>21 BY MS. GOODMAN:</p> <p>22 Q. So since the early 2000s, is it accurate</p> <p>23 that you have not read the strat -- the technical</p> <p>24 proposals submitted by ad agencies?</p> <p>25 MS. CLEMONS: Objection to form.</p>
<p style="text-align: right;">Page 119</p> <p>1 man -- Marketing Group, did you review technical</p> <p>2 proposals?</p> <p>3 A. No, I did not.</p> <p>4 MS. CLEMONS: Objection to form.</p> <p>5 THE WITNESS: I'm so sorry.</p> <p>6 BY MS. GOODMAN:</p> <p>7 Q. Have you ever had occasion to read</p> <p>8 them?</p> <p>9 MS. CLEMONS: Objection to form.</p> <p>10 THE WITNESS: Have I ever had the</p> <p>11 occasion to read a technical proposal of any</p> <p>12 sort?</p> <p>13 BY MS. GOODMAN:</p> <p>14 Q. Of -- related to any advertising</p> <p>15 campaign handled by the Strategic Marketing Group</p> <p>16 at CMS.</p> <p>17 A. You had a lot of very specific details</p> <p>18 in that question that would lead me to say no.</p> <p>19 Q. What are the specific details in my</p> <p>20 question that would lead you to say no?</p> <p>21 A. One of them was the "Strategic Marketing</p> <p>22 Group."</p> <p>23 Q. Did I state that incorrectly?</p> <p>24 MS. CLEMONS: Objection to form.</p> <p>25 THE WITNESS: You did not say "Strategic</p>	<p style="text-align: right;">Page 121</p> <p>1 THE WITNESS: The technical proposals</p> <p>2 are written by -- are read and judged by trained</p> <p>3 staff who work for me.</p> <p>4 BY MS. GOODMAN:</p> <p>5 Q. Okay. And so your trained staff read</p> <p>6 and review them, but you do not; is that correct?</p> <p>7 A. That is correct.</p> <p>8 Q. Okay. Do you discuss the technical</p> <p>9 proposals with your staff?</p> <p>10 A. I do not.</p> <p>11 Q. Why not?</p> <p>12 A. Because it is inappropriate for people</p> <p>13 judging a technical proposal to talk with other</p> <p>14 people about it in the process of an acquisition.</p> <p>15 Q. Why is that improper or inappropriate?</p> <p>16 A. I would only be doing conjecture, but</p> <p>17 it's -- the government has a goal to be fair to</p> <p>18 all businesses. And so, therefore, the people</p> <p>19 who read the proposals and judge them are doing</p> <p>20 so in a non-biased sense. And discussing with</p> <p>21 anyone else could -- could increase or add bias</p> <p>22 to a process.</p> <p>23 Q. And which of your staff reviewed</p> <p>24 technical proposals for the Healthcare.gov Open</p> <p>25 Enrollment campaigns in the '19 to '23 time</p>

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<p style="text-align: right;">Page 226</p> <p>1 Q. So you can't answer -- you are unable</p> <p>2 to answer that question without relying on</p> <p>3 privileged communications; is that correct?</p> <p>4 A. That is correct.</p> <p>5 Q. So you've never raised those concerns</p> <p>6 with anybody at your advertising agencies, for</p> <p>7 example. Is that accurate?</p> <p>8 A. As part of the informal conversations</p> <p>9 with colleagues, I can't recall.</p> <p>10 Q. Okay. You referenced DoubleClick. What</p> <p>11 is DoubleClick?</p> <p>12 A. DoubleClick is a tool that allows us to</p> <p>13 track ad performance and our websites together.</p> <p>14 Q. So it's a -- it's an -- a data</p> <p>15 monitoring tool. Is that accurate?</p> <p>16 A. From my understanding, that's partially</p> <p>17 accurate. It's also a data-creating tool.</p> <p>18 Q. And Google Analytics, has CMS decided</p> <p>19 not to use Google Analytics anymore --</p> <p>20 MS. CLEMONS: Objection; form.</p> <p>21 BY MS. GOODMAN:</p> <p>22 Q. -- within the Strategic Marketing Group,</p> <p>23 at least?</p> <p>24 A. The Strategic Marketing Group did not</p> <p>25 decide not to use Google Analytics.</p>	<p style="text-align: right;">Page 228</p> <p>1 networks and talk about the price of what's</p> <p>2 available.</p> <p>3 BY MS. GOODMAN:</p> <p>4 Q. And do you participate in discussions</p> <p>5 between advertising agencies and any vendors over</p> <p>6 price for ad buys on behalf of CMS?</p> <p>7 MS. CLEMONS: Objection to form.</p> <p>8 THE WITNESS: We participate in</p> <p>9 conversations with the ad agencies over price and</p> <p>10 what they've done to negotiate, and we provide</p> <p>11 direction when we think there's other</p> <p>12 negotiations that should be done.</p> <p>13 BY MS. GOODMAN:</p> <p>14 Q. Okay. But you -- but does any</p> <p>15 individual from CMS actually participate in the</p> <p>16 negotiations over price?</p> <p>17 MS. CLEMONS: Objection to form.</p> <p>18 Foundation.</p> <p>19 THE WITNESS: To the extent that we</p> <p>20 direct our ad agencies on negotiating a price, we</p> <p>21 do participate.</p> <p>22 BY MS. GOODMAN:</p> <p>23 Q. Okay. Beyond -- aside from the</p> <p>24 extent to which you direct your ad agencies on</p> <p>25 negotiating a price, is there any other way in</p>
<p style="text-align: right;">Page 227</p> <p>1 Q. Did somebody else decide not to use</p> <p>2 Google Analytics?</p> <p>3 MS. CLEMONS: Objection; form.</p> <p>4 Foundation.</p> <p>5 THE WITNESS: By "somebody else,"</p> <p>6 would -- could you give me a little more on that?</p> <p>7 BY MS. GOODMAN:</p> <p>8 Q. Is the Strategic Marketing Group -- has</p> <p>9 the Strategic Marketing Group transitioned from</p> <p>10 using Google Analytics to an Adobe product?</p> <p>11 A. The Strategic Marketing Group is in the</p> <p>12 process of that right now.</p> <p>13 Q. Okay. Why are you in that process now?</p> <p>14 A. The people who manage the websites,</p> <p>15 which is different from the Strategic Marketing</p> <p>16 Group, made a decision to go from Google</p> <p>17 Analytics to the Adobe product.</p> <p>18 Q. Okay. So under the agency -- the</p> <p>19 CMS's contracts with advertising agencies, is it</p> <p>20 accurate that the advertising agency negotiates</p> <p>21 the prices to be paid for advertising?</p> <p>22 MS. CLEMONS: Objection to form.</p> <p>23 Foundation.</p> <p>24 THE WITNESS: In an ad agency, there</p> <p>25 are buyers who get on the phones, like, with TV</p>	<p style="text-align: right;">Page 229</p> <p>1 which you participate in such negotiations? And</p> <p>2 when I say "you," I mean CMS individuals.</p> <p>3 MS. CLEMONS: Objection to form.</p> <p>4 Foundation.</p> <p>5 THE WITNESS: Our participation is</p> <p>6 through the direction of those who work for us.</p> <p>7 BY MS. GOODMAN:</p> <p>8 Q. Okay. The advertising purchases which</p> <p>9 your ad agency makes on behalf of CMS are part of</p> <p>10 a bundle of services that the ad agency provides,</p> <p>11 correct?</p> <p>12 MS. CLEMONS: Objection; form.</p> <p>13 Foundation.</p> <p>14 THE WITNESS: I'm not sure what you mean</p> <p>15 by "bundle."</p> <p>16 BY MS. GOODMAN:</p> <p>17 Q. A group of services that the ad agency</p> <p>18 provides includes buying ads, as well as other</p> <p>19 services, correct?</p> <p>20 MS. CLEMONS: Objection to form.</p> <p>21 Foundation.</p> <p>22 THE WITNESS: I would say that we</p> <p>23 contract with the ad agencies to help us</p> <p>24 implement our ad campaigns.</p> <p>25 BY MS. GOODMAN:</p>

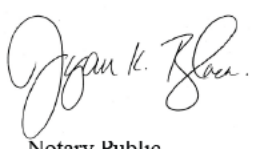
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<p style="text-align: right;">Page 230</p> <p>1 Q. And that includes both buying ads as</p> <p>2 well as other services, correct?</p> <p>3 MS. CLEMONS: Objection to form.</p> <p>4 Foundation.</p> <p>5 THE WITNESS: There are other activities</p> <p>6 involved.</p> <p>7 BY MS. GOODMAN:</p> <p>8 Q. And -- okay.</p> <p>9 The ad agencies with whom CMS works, are</p> <p>10 they independent of CMS?</p> <p>11 MS. CLEMONS: Objection; form.</p> <p>12 THE WITNESS: What is your definition of</p> <p>13 "independent of CMS"?</p> <p>14 BY MS. GOODMAN:</p> <p>15 Q. They're a separate entity.</p> <p>16 MS. CLEMONS: Objection to form. Calls</p> <p>17 for a legal conclusion.</p> <p>18 THE WITNESS: They are contracted</p> <p>19 entity.</p> <p>20 BY MS. GOODMAN:</p> <p>21 Q. Okay. Separate from CMS, correct?</p> <p>22 MS. CLEMONS: Objection to form.</p> <p>23 THE WITNESS: Bound by a contract.</p> <p>24 BY MS. GOODMAN:</p> <p>25 Q. And does CMS control the ad agency's</p>	<p style="text-align: right;">Page 232</p> <p>1 Direct and control are very similar.</p> <p>2 Q. Okay. When the -- when a advertising</p> <p>3 budget is set for a particular channel of</p> <p>4 advertising, does the ad agency have discretion</p> <p>5 on how to spend that budget within the channel?</p> <p>6 MS. CLEMONS: Objection to form.</p> <p>7 THE WITNESS: No.</p> <p>8 BY MS. GOODMAN:</p> <p>9 Q. No? Why not?</p> <p>10 A. Because we do.</p> <p>11 Q. What do you mean by that?</p> <p>12 A. Well, as we've discussed earlier today,</p> <p>13 even optimizations go through ATBs. Those ATBs</p> <p>14 are a form of the direction that we give the</p> <p>15 advertiser on how to spend the budget.</p> <p>16 Q. Okay. So if an ATB authorizes \$10,000</p> <p>17 in purchases for social media, does the ad agency</p> <p>18 have discretion on how to spend that \$10,000</p> <p>19 within the social media category?</p> <p>20 MS. CLEMONS: Objection to form.</p> <p>21 THE WITNESS: No. There are -- no.</p> <p>22 BY MS. GOODMAN:</p> <p>23 Q. And why not?</p> <p>24 A. Because in the end, CMS is responsible</p> <p>25 for how we're spending taxpayer dollars and</p>
<p style="text-align: right;">Page 231</p> <p>1 activities?</p> <p>2 MS. CLEMONS: Objection to form. Calls</p> <p>3 for a legal conclusion. Foundation.</p> <p>4 THE WITNESS: All their activities?</p> <p>5 BY MS. GOODMAN:</p> <p>6 Q. Does CMS control the ad agency's</p> <p>7 activities relative to the advertising services</p> <p>8 that the ad agency provides to CMS?</p> <p>9 MS. CLEMONS: Objection to form. Calls</p> <p>10 for a legal conclusion. Foundation.</p> <p>11 THE WITNESS: Control is not a term I've</p> <p>12 used before. Direct. But I can see how they are</p> <p>13 related, so we direct those activities.</p> <p>14 BY MS. GOODMAN:</p> <p>15 Q. But you would not say that CMS controls</p> <p>16 their activities. Is that accurate?</p> <p>17 MS. CLEMONS: Objection; form. Calls</p> <p>18 for a legal conclusion. Foundation.</p> <p>19 THE WITNESS: Well, I would say that we</p> <p>20 control their activities.</p> <p>21 BY MS. GOODMAN:</p> <p>22 Q. Why is that?</p> <p>23 A. Well, in part, I never thought about it</p> <p>24 like that until you just -- you just started</p> <p>25 using the word.</p>	<p style="text-align: right;">Page 233</p> <p>1 responsible for the impact of our campaigns.</p> <p>2 Q. And so is it accurate that CMS directs</p> <p>3 the ad agency to spend \$10 on Facebook, \$10 on</p> <p>4 Instagram, \$10 on LinkedIn, or is that specific</p> <p>5 allocation within the discretion of the</p> <p>6 advertising agency, so long as it is within</p> <p>7 the authorization to buy?</p> <p>8 MS. CLEMONS: Objection to form.</p> <p>9 THE WITNESS: If there was any</p> <p>10 discretion, that would be discretion given by</p> <p>11 CMS.</p> <p>12 BY MS. GOODMAN:</p> <p>13 Q. Okay.</p> <p>14 A. But I am not aware of any such</p> <p>15 discretion.</p> <p>16 Q. Can you go back to Exhibit 69?</p> <p>17 And if you turn to Page 810, this is an</p> <p>18 authorization to buy, correct?</p> <p>19 A. It's gonna take me a minute to ascertain</p> <p>20 that.</p> <p>21 (Reviews document.)</p> <p>22 Yes. Correct.</p> <p>23 Q. Okay. And you see that this particular</p> <p>24 example states, just under the chart, that</p> <p>25 "Centers for Medicare and Medicaid services</p>

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<p>1 client signature authorizes Weber Shandwick</p> <p>2 Agency to purchase media totaling 8. --</p> <p>3 \$8,219,893, plus or minus 5 percent, correct?</p> <p>4 A. Correct.</p> <p>5 Q. So that "plus or minus 5 percent," is</p> <p>6 that committed to the discretion of the ad agency</p> <p>7 for the -- for buying purposes?</p> <p>8 MS. CLEMONS: Objection to form.</p> <p>9 THE WITNESS: No.</p> <p>10 BY MS. GOODMAN:</p> <p>11 Q. Why not?</p> <p>12 A. There are many factors that go into the</p> <p>13 availability of -- of media at any given time,</p> <p>14 the availability of a purchase. And some of</p> <p>15 these tactics, channels, such as search,</p> <p>16 the amount of spend there is what we call</p> <p>17 demand-driven, which isn't just that you've made</p> <p>18 a decision "I'm going to spend a hundred thousand</p> <p>19 dollars on search," but it depends on how many</p> <p>20 people actually search the terms that you're</p> <p>21 bidding on to put those ads. Therefore, there is</p> <p>22 a natural fluctuation in ad availability and ad</p> <p>23 cost that neither CMS nor Weber Shandwick can be</p> <p>24 a hundred percent held accountable. So we give</p> <p>25 ourselves a 5 percent plus or minus within these</p>	<p>1 supposed to be spent as in -- as directed in the</p> <p>2 flowcharts of what we looked at before for these</p> <p>3 campaigns.</p> <p>4 BY MS. GOODMAN:</p> <p>5 Q. Okay. And each and every time a</p> <p>6 purchase is, in fact, made according to the</p> <p>7 flowcharts, are you made aware of that, or of the</p> <p>8 price that is paid at that particular time?</p> <p>9 A. We --</p> <p>10 MS. CLEMONS: Objection to form.</p> <p>11 THE WITNESS: We monitor on a very close</p> <p>12 basis how that money is spent over time and in</p> <p>13 what channels.</p> <p>14 BY MS. GOODMAN:</p> <p>15 Q. Okay. Does the ad agency obtain</p> <p>16 anybody's approval at CMS prior to making any</p> <p>17 particular advertising buy so long as it is</p> <p>18 within the authorization to buy?</p> <p>19 MS. CLEMONS: Objection to form.</p> <p>20 THE WITNESS: The authorization to buy</p> <p>21 provides the government a lot of control and</p> <p>22 provides a lot of direction to how the ad agency</p> <p>23 then carries out the minutia of the budget.</p> <p>24 BY MS. GOODMAN:</p> <p>25 Q. Okay. And so is anybody at CMS aware</p>
Page 235	Page 237
<p>1 numbers based on that.</p> <p>2 Q. Okay. And the sentence here that says,</p> <p>3 "With client's consent, shifts in allocation of</p> <p>4 the spend across channels may be made without the</p> <p>5 need for a new ATB so long as the total spend</p> <p>6 does not exceed the amount authorized in this</p> <p>7 document," what does that mean?</p> <p>8 A. That means that we can direct the</p> <p>9 media buy and not have an ATB every single time</p> <p>10 -- optimizations of not having an ATB every</p> <p>11 single time.</p> <p>12 Q. And when your advertising agency is</p> <p>13 making ad purchases for CMS, are you aware of</p> <p>14 each and every time they are making a purchase on</p> <p>15 Google or through the Trade Desk or through AARP</p> <p>16 and the exact price that is negotiated for such</p> <p>17 purchases are agreed?</p> <p>18 MS. CLEMONS: Objection to form.</p> <p>19 THE WITNESS: Well, as -- my</p> <p>20 understanding is in the time period of this,</p> <p>21 there's 44 campaigns, something like that, me</p> <p>22 personally, not necessarily everything, but my</p> <p>23 staff is.</p> <p>24 We are aware of the allocation of</p> <p>25 the budget and the timelines for when they are</p>	<p>1 -- made aware of each and every time that the ad</p> <p>2 agency is carrying out the minutia of the budget?</p> <p>3 MS. CLEMONS: Objection to form.</p> <p>4 THE WITNESS: Not to my knowledge.</p> <p>5 BY MS. GOODMAN:</p> <p>6 Q. Okay. And is carrying out the minutia</p> <p>7 of the budget committed to the discretion of the</p> <p>8 ad agency?</p> <p>9 MS. CLEMONS: Objection to form.</p> <p>10 THE WITNESS: What is your definition of</p> <p>11 "minutia of the budget"?</p> <p>12 BY MS. GOODMAN:</p> <p>13 Q. I'm using it as you used the term, so</p> <p>14 you tell me how you're using it.</p> <p>15 A. So the exact hour that somebody gets</p> <p>16 on the phone call and -- and told -- talks to</p> <p>17 somebody about the placement of an ad, actually,</p> <p>18 we've actually reviewed all of those too, on some</p> <p>19 campaigns, the exact placement of every single</p> <p>20 ad. That is what I would call the minutia.</p> <p>21 What I would call the important control</p> <p>22 and the important direction is the, "these are</p> <p>23 the channels we're going to use; this is the</p> <p>24 audience we're gonna reach; this is the delivery</p> <p>25 we expect for that," and on a weekly basis how</p>

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<p>1 deposition is over and that Google does not have</p> <p>2 grounds to hold the deposition open.</p> <p>3 MS. GOODMAN: Okay. Thank you for your</p> <p>4 time, Mr. Koepke.</p> <p>5 THE WITNESS: It was my pleasure. This</p> <p>6 was fun.</p> <p>7 THE VIDEOGRAPHER: Time is 6:23 p.m.</p> <p>8 We're off the record.</p> <p>9 (Deposition concluded -- 6:23 p.m.)</p>	<p>1 Katherine Clemons Esq</p> <p>2 Katherine.clemons@usdoj.gov</p> <p>3 August 22nd, 2023</p> <p>4 RE: United States, Et Al v. Google, LLC</p> <p>5 8/21/2023, Christopher Koepke (#6043164)</p> <p>6 The above-referenced transcript is available for</p> <p>7 review.</p> <p>8 Within the applicable timeframe, the witness should</p> <p>9 read the testimony to verify its accuracy. If there are</p> <p>10 any changes, the witness should note those with the</p> <p>11 reason, on the attached Errata Sheet.</p> <p>12 The witness should sign the Acknowledgment of</p> <p>13 Deponent and Errata and return to the deposing attorney.</p> <p>14 Copies should be sent to all counsel, and to Veritext at</p> <p>15 (erratas-cs@veritext.com).</p> <p>16</p> <p>17 Return completed errata within 30 days from</p> <p>18 receipt of testimony.</p> <p>19 If the witness fails to do so within the time</p> <p>20 allotted, the transcript may be used as if signed.</p> <p>21</p> <p>22 Yours,</p> <p>23 Veritext Legal Solutions</p> <p>24</p> <p>25</p>
<p>Page 291</p> <p>1 CERTIFICATE</p> <p>2</p> <p>3 I do hereby certify that I am a Notary</p> <p>4 Public in good standing, that the aforesaid</p> <p>5 testimony was taken before me, pursuant to</p> <p>6 notice, at the time and place indicated; that</p> <p>7 said deponent was by me duly sworn to tell the</p> <p>8 truth, the whole truth, and nothing but the</p> <p>9 truth; that the testimony of said deponent was</p> <p>10 correctly recorded in machine shorthand by me and</p> <p>11 thereafter transcribed under my supervision with</p> <p>12 computer-aided transcription; that the deposition</p> <p>13 is a true and correct record of the testimony</p> <p>14 given by the witness; and that I am neither of</p> <p>15 counsel nor kin to any party in said action, nor</p> <p>16 interested in the outcome thereof.</p> <p>17</p> <p>18 WITNESS my hand and official seal this</p> <p>19 22nd day of</p> <p>20 </p> <p>21</p> <p>22 Notary Public</p> <p>23</p> <p>24</p> <p>25</p>	<p>Page 293</p> <p>1 United States, Et Al v. Google, LLC</p> <p>2 Christopher Koepke (#6043164)</p> <p>3 E R R A T A S H E E T</p> <p>4 PAGE ____ LINE ____ CHANGE ____</p> <p>5</p> <p>6 REASON ____</p> <p>7 PAGE ____ LINE ____ CHANGE ____</p> <p>8</p> <p>9 REASON ____</p> <p>10 PAGE ____ LINE ____ CHANGE ____</p> <p>11</p> <p>12 REASON ____</p> <p>13 PAGE ____ LINE ____ CHANGE ____</p> <p>14</p> <p>15 REASON ____</p> <p>16 PAGE ____ LINE ____ CHANGE ____</p> <p>17</p> <p>18 REASON ____</p> <p>19 PAGE ____ LINE ____ CHANGE ____</p> <p>20</p> <p>21 REASON ____</p> <p>22</p> <p>23</p> <p>24 Christopher Koepke Date</p> <p>25</p>

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1 United States, Et Al v. Google, LLC
2 Christopher Koepke (#6043164)
3 ACKNOWLEDGEMENT OF DEPONENT
4 I, Christopher Koepke, do hereby declare that I
5 have read the foregoing transcript, I have made any
6 corrections, additions, or changes I deemed necessary as
7 noted above to be appended hereto, and that the same is
8 a true, correct and complete transcript of the testimony
9 given by me.
10
11 _____
12 Christopher Koepke Date
13 *If notary is required
14 SUBSCRIBED AND SWORN TO BEFORE ME THIS
15 _____ DAY OF _____, 20____.
16
17
18 _____
19 NOTARY PUBLIC
20
21
22
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United States, Et Al v. Google, LLC

Christopher Koepke (#6075382)

E R R A T A S H E E T

PAGE 11 LINE 4 CHANGE _____

"neck" should read "NEC"

REASON _____

PAGE 66 LINE 16 CHANGE _____

"organization" should read "authorization"

REASON _____

PAGE 89 LINE 21 CHANGE _____

"Aaron Blazer" should read "Erin Blazar"

REASON _____

PAGE 90 LINE 2 CHANGE _____

"Aaron Blazer" should read "Erin Blazar"

REASON _____

PAGE 90 LINE 6 CHANGE _____

"Aaron" should read "Erin"

REASON _____

PAGE 91 LINE 14 CHANGE _____

"Aaron Blazer" should read "Erin Blazar"

REASON _____

Page: 102 Line: 6 Change: "DO" should read "DOJ"

Christopher P. Koepke

Digitally signed by Christopher P. Koepke -S

9/29/23

Date: 2023.09.29 11:18:12 -04'00'

Christopher Koepke

Date

United States, Et Al v. Google, LLC

Christopher Koepke (#6075382)

ACKNOWLEDGEMENT OF DEPONENT

I, Christopher Koepke, do hereby declare that I have read the foregoing transcript, I have made any corrections, additions, or changes I deemed necessary as noted above to be appended hereto, and that the same is a true, correct and complete transcript of the testimony given by me.

Christopher P.
Koepke -S

Digitally signed by Christopher
P. Koepke -S
Date: 2023.09.29 11:56:51
-04'00'

9/29/23

Christopher Koepke

Date

*If notary is required

SUBSCRIBED AND SWORN TO BEFORE ME THIS

_____ DAY OF _____, 20____.

NOTARY PUBLIC